HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE Ms. JUSTICE G. ROHINI

Writ Petition No.19641 of 2007

Between :

1. M/s. Sri Veera Venkata Satayanrayana Rice Mill,
A partnership firm, rep. By its Partner Sri Gade Satyanarayana,
S/o. GVSV Raghavulu, aged about 60 years, Occupation:
Business, Polapalli, Via Palakole Mandal, West Godavari
District., and another. … Petitioners

And

1. State Bank of India, Poolapalli Branch,
Paakole Branch, rep. By its Branch Manager,
West Godavari District and another. .. Respondents

:: O R D E R ::

Counsel for the petitioners : Shri G. Vidya Sagar

Counsel for the respondents : Shri M. Narender Reddy

October 23, 2007

Per G. ROHINI, J

The 1st petitioner herein is a partnership firm carrying on business in rice-milling. The 2nd petitioner is one of the partners of the 1st petitioner firm.

It is not in dispute that the 1st petitioner having availed certain credit facilities from the 1st respondent Bank could not repay the same as agreed upon. Consequently the 1st respondent filed O.A.No.442 of 2002 on the file of Debts Recovery Tribunal, Visakhapatnam for recovery of a sum of Rs.16,34,537/-. The said O.A. was allowed ex parte on 18-7-2003. Though the petitioners filed applications to set aside the ex parte order and condonation of delay, the same were dismissed. Challenging the same, the petitioners approached the Debts Recovery Appellate Tribunal, Chennai and the appeals were allowed by order dated 27-8-2004 with a direction to the petitioners to deposit 30% of the claim with the 1st respondent Bank within a period of 8 weeks and that the same should be kept as fixed deposit receipt.

The petitioners could not comply with the said order and filed W.P.No.19003 of 2004 before this Court contending that the condition to deposit 30% of the claim was onerous. A Division Bench of this Court though declined to interfere with the order passed by the Debts Recovery Appellate Tribunal, granted extension of time by four weeks. Thereafter, the petitioners deposited a sum of Rs.5 lakhs towards 30% of the claim on 16-11-2004 which was in turn deposited in a special term deposit by the 1st respondent Bank. Pursuant thereto, O.A.No.442 of 2002 was restored.

While further proceedings were pending, the 1st respondent

Bank, by letter dated 24-1-2006, informed the petitioners that a sum of Rs.13,12,415/- was the outstanding balance in their loan account as on the date on which the account was categorized as doubtful NPA and that the same was eligible for One Time Settlement (OTS) under Reserve Bank of India (RBI) Guidelines subject to the terms specified thereunder. Having accepted the said proposal, the petitioners vide letter dated 20-2-2006 requested the 1st respondent Bank to adjust Rs.5 lakhs FDR, already in deposit with them, towards 25% upfront payment under OTS. Since the said request was not accepted by the 1st respondent Bank, the petitioners deposited a sum of Rs.3,30,000/- on 31-3-2006 towards 25% upfront payment.

However, without processing the petitioners' case for OTS, the 1st respondent published a sale notice dated 6-4-2006 in local dailies proposing to auction the mortgaged properties on the basis of the Recovery Certificate dated 18-7-2003. Aggrieved by the same, the petitioners filed W.P.No.8063 of 2006. After hearing both the parties, a Division Bench of this Court disposed of the said Writ Petition by order dated 26-4-2006 in the following terms :

> "(1) The Bank shall be free to withdraw Rs.5 lakhs deposited by the petitioners in furtherance of order dated 27-8-2004 passed by the Appellate Tribunal.
> (2) The petitioners shall pay balance amount with interest in two equated monthly installments. The first installment shall be paid on or before 31-5-2006 and the second installment shall be paid on or before 30-6-2006.
> (3) If the petitioners pay the balance amount in accordance with the direction contained in this order, then all the proceedings initiated by the bank for seizure and disposal of the property shall automatically lapse. If, on the other hand, the petitioners failed to pay balance amount in two equated monthly installments, then the bank shall be free to reinitiate the proceedings for auction of the property. In that event, the petitioners shall not be entitled to file fresh writ petition in this Court or nay other litigation in any Court in the State of Andhra Pradesh."

In compliance with the said order, the petitioners paid Rs.2,35,000/- on 26-5-2006 and a further sum of Rs.2,21,000/- on 24-6-2006 towards the balance amount. Thereafter, they made a

representation dated 1-7-2006 requesting the 1st respondent Bank to withdraw O.A.No.442 of 2002 on the file of the Debts Recovery Tribunal, Visakhapatnam as per the order of the Division Bench, dated 26-4-2006 and to return the original title deeds of mortgaged properties. However, instead of returning the title deeds, the 1st respondent Bank by letter dated 3-7-2006 called upon the petitioners to pay a further sum of Rs.11,79,000/- allegedly due towards interest on the outstanding dues from 30-6-2000, according to PLR (Prime Lending Rate) interest rates.

Hence, this writ petition seeking a Mandamus declaring the action of the 1st respondent in issuing the letter dated 3-7-2006 in spite of payment of the entire amount as per the OTS letter dated 24-1-2006 as well as the order of this Court dated 26-4-2006 in W.P.No.8063 of 2006 as arbitrary and illegal.

A counter-affidavit has been filed on behalf of the 1st respondent Bank stating that after adjusting Rs.13,30,702/- in deposit to the credit of the 1st petitioner to the loan account on 28-6-2006, still a sum of Rs.14,49,534/- was due to the Bank as on 15-6-2007 with interest at PLR. It is further stated that the claim of the 1st respondent Bank in its letter dated 3-7-2006 was arrived after adjustment of the amounts paid by the petitioners and after duly calculating the interest at the PLR as reflected in the detailed calculation memo dated 15-6-2007.

We have heard the learned Counsel for both the parties and perused the material on record.

It is not in dispute that the scheme for OTS offered by the 1st respondent Bank in terms of RBI guidelines was operative till 31-3-2006. In the letter dated 24-1-2006, under which the petitioners were called upon to express their willingness to settle the dues under One Time Settlement, the 1st respondent Bank informed the petitioners that a sum of Rs.13,12,415/- was the outstanding balance in the loan account as on the date on which the account was categorized as

doubtful NPA. It was also specifically mentioned that payment of the said amount in installments would be considered subject to payment of at least 25% of the amount of settlement and the balance shall be paid in installments over a period of one year together with interest at Bank's PLR from the date of settlement till date of final payment. Admittedly the said 25% upfront payment was made by the petitioners on 31-3-2006 i.e., within the time prescribed under the OTS scheme.

Thereafter, W.P.No.8063 of 2006 was disposed of by this Court on 26-4-2006 permitting the petitioners to pay the balance amount, after adjusting Rs.5,00,000/- already deposited by the petitioner, in two installments payable by 31-5-2006 and 30-6-2006. Accordingly, the petitioners paid Rs.2,35,000/- on 26-5-2006 and a further sum of Rs.2,21,000/- on 24-6-2006. According to the petitioners, the said amounts included the PLR interest payable on the balance amount. Admittedly, the said payments were made well within the time granted by this Court in W.P.No.8063 of 2006. In the light of the above payments, which are not disputed in the calculation memo filed by the 1st respondent bank, all the proceedings initiated by the Bank shall automatically lapse in terms of the order of this Court in W.P.No.8063 of 2006.

However, the impugned demand of Rs.11,79,000/- under the letter dated 3-7-2006 is sought to be justified by the 1st respondent Bank contending that since the OTS offered to the petitioner has been withdrawn on 29-3-2006, the petitioners are liable to pay the entire amount due under the loan account and therefore the amounts paid on 26-5-2006 and 24-6-2006 are not sufficient to satisfy the balance amount.

On a careful consideration of the entire material on record, particularly the letter dated 29-3-2006 addressed by the 1st respondent Bank, we are unable to accept the 1st respondent's plea that OTS proposal offered to the petitioners was already withdrawn.

Under the letter dated 29-3-2006, the 1st respondent had only declined to accept the petitioner's request to adjust Rs.5 lakhs already in deposit towards 25% upfront payment under OTS on the ground that the petitioners failed to honour their commitment under RBI – OTS Scheme, 2003. Consequent to the 1st respondent's refusal to adjust the Fixed Deposit Receipt of Rs.5 lakhs towards 25% upfront payment, the petitioners paid the 25% of the amount of settlement on 31-3-2006 and the same was accepted by the 1st respondent. The said fact itself shows that the OTS offer is very much alive. No other material is placed before this Court to show that OTS proposal offered by the 1st respondent by its letter dated 24-1-2006 has been withdrawn subsequently. If that be so, the petitioners are liable to pay only the outstanding balance as on the date on which the account was categorized as doubtful NPA together with interest at Banks' PLR from the date of settlement till the date of final payment in terms of the letter dated 24-1-2006.

As could be seen from the 1st respondent's letter dated 24-1-2006, the outstanding balance in the account of the 1st petitioner as on the date of its categorization as doubtful NPA was Rs.13,12,415/-. Admittedly, the said amount has already been paid together with interest as explained in the petitioner's letter dated 1-7-2006.

Hence, the action of the 1st respondent Bank in claming interest from 30-6-2000 and thus claiming a further sum of Rs.11,79,000/- from the petitioners is not only arbitrary, illegal and without any basis but also contrary to the directions of this Court in W.P.No.8063 of 2006.

Hence, the Writ Petition is allowed and the impugned demand made by the respondents for PLR interest with effect from 30-6-2000 is declared as illegal and quashed. No costs.

G. ROHINI, J

G.S. SINGHVI, CJ

October 23, 2007
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